

IN THE SUPREME COURT OF SEYCHELLES

Reportable
CR93 /2019

In the matter between

THE REPUBLIC
(rep. by *Hermanth Kumar*)

Prosecution

and

FLORENCE FRANCOISE
(rep. by *Manuella Parmentier*)

1st Accused

NIGEL ARRISOL
(rep. by *S. Rajasundaram*)

2nd Accused

Neutral Citation *The Republic v Florence Francoise & Anor* (CR93/2019) delivered on 18 January 2024

Before: Vidot J

Summary Manslaughter contrary to section 192 and punishable under section 195 of the Penal Code; failure to exercise duty of care through an unlawful omission amounting to culpable negligence; and Accessory after the fact to a felony contrary to section 384 and punishable under section 385 of the Penal Code; absence of knowledge of the commission of the crime

Heard:

Delivered: 19 January 2024

JUDGMENT

VIDOT J

The Charges

[1] The Accused Florence Francoise and Nigel Antoine are charged as follows;

Count 1

Statement of Offence

Manslaughter contrary to section 192 of the Penal Code and punishable under section 195 of the Penal Code.

Particulars of Offence

Florence Francoise of Les Mamelles, Mahe, on the 2nd June 2017, at Les Mamelles, at around 04.00 hrs, caused the death of Aitor Serrano Valtierra, a Spanish national (passport No.PAB339089) by unlawful omission amounting to culpable negligence to display a duty tending to the preservation of life, by not attending or seeking assistance/treatment, thereby resulting in his death.

Count 2

Statement of Offence

Accessory after the fact to a felony, contrary to section 384 of the Penal Code and punishable under section 385 of the Penal Code.

Particulars of Offence

Nigel Arrisol, of Pointe Larue, Mahe on 12th June 2017, at Les Mamelles, at around 07.00 hrs, assisted Florence Francoise of Les Mamelles, Mahe, whom he knew to have caused the death of Aitor Serrano Valterra, a Spanish national (passport No. PAB339089), by transporting and disposing of the body, in order to enable her to conceal the offence and escape punishment.

The Evidence

[2] The case concerns a Spanish National, Aitor Serrano Valtierra, (hereafter “the deceased”) who was working on a Spanish fishing vessel, whose dead body was

discovered at the Perseverance. The allegations are that the deceased had been to the Barrel Discotheque where he met with the 1st Accused. She took him to her house at Les Mamelles. Whilst there, drugs was consumed and the deceased was later found unresponsive. At that time it is alleged that it was believed that he was dead. The Accused got in contact with the 2nd Accused who agreed to drive the deceased, the 1st Accused and one Salima Marday to a secluded area at Perseverance to dispose of the body.

(a) Prosecution Evidence

- [3] The first and second Accused made statements to the Police. These statements were challenged in a voir-dire but were ruled admissible. Florence Francoise made two statements. In her first statement she explained that on the 02nd June 2017, she had gone down to the Barrel Discotheque in Victoria with her cousin Salima Marday. At some point they separated and she remained at the disco where she met the deceased. The deceased had proposed to her and she told him that they could go to her home. They went to her home at Les Mamelles. She went to her room with him where they had sex. After having sex, she went downstairs for a shower. Then the deceased went to sleep and asked her to wake him up at 04.00 hours. When she attempted to wake him up, he said that he was not feeling well and so he would not get up. So, she left him on the bed. Salima Marday, came home and she saw the deceased and Salima told her that the deceased was unwell. So, she woke up the deceased and he dressed up. He wore his shoes and took his telephone and wallet in which there was SR500/- with him. Together with Salima she got the man by the road to get into the 2nd Accused's vehicle and he fell to the ground. However, they managed to place him in the vehicle and drove him to Perseverance where they disposed of him. However, she made another statement, retracting part of the first statement and in particular stated that when they took the deceased from the room to the sitting room of her house, the deceased had already passed.
- [4] In his statement, Nigel deposed that he sometimes stays at Florence's house. He is assisted by his work place with a vehicle which he sometimes uses as an unlicensed taxi (taxi pirat). On 01st June 2017, he went to Florence's house to get some cannabis to

smoke. After using the cannabis he stayed at her home. In the early morning the next day, Florence and Salima told him that he would have to convey a foreign guy to the fishing port. He went to sleep and when he woke up it was already daylight. It was around 07.00hrs to 07.30 hrs. Both Florence and Salima were up and Florene said that it appears that the foreign has passed out. When Salima and Florence brought the guy down from the bedroom, it appears that he was not showing any sign of life. He intimated that they take the man to a hospital or a police station but Salima and Florence said that the guy has to be brought to a place where people could find him. They placed the man in the black car he was placed in a slanting position but his leg would not fold. He was convinced that the man had passed away. He then drove the car away. Salima and the 1st Accused were also in the car. They took the road to Perseverance. He drove through a lane into the bushes. He asked Salima and Florence to take the man out. Just like he did not participate embarking the body in the car, he did not help with disposing of the body. When the man was placed in the car, that man did not have his shoes on. He states that he did not report the matter to the Police as he did not want to get embroiled in problems.

[5] Salima Marday the cousin of the 1st Accused was at the time of incident residing at Les Mamelles at Florence's house. She recounted that on the night of 02nd June 2017, she and Florence went to Barrel Discotheque but she decided to leave that place and went into town and returned home at around 4 a.m to 4.30 a.m. When she arrived home, Laura told her that someone was in the house and was having difficulty breathing. She sat down had a smoke and around 5 a.m. went to check on the guy upstairs. She noticed that the person's lips had turned blue and his ears were purple. Then, together with Florence, she removed the deceased from the bed and she noticed that he was dead. Florence brought the man downstairs. Then the man was placed on the sofa. Florence, then got him to stand and blood was flowing from the man's nose. She suspected that the man must have suffocated. She then got another man (Nigel Arrisol) who was in the house to wake up. Florence spoke to Nigel and asked to bring the other man out, to remove the body and place it in a black car.

[6] The man was placed in Nigel's vehicle and was driven away. He and Florence were in the car as well. Florence directed them to go to Perseverance. She advised Florence to

bring the man to hospital. She did not. Upon arrival at Perseverance, they disembarked and Florence removed the body from the vehicle. By the time the body was removed from the car, it was already stiff. After the body was removed from the vehicle they re-embarked into the vehicle and went back home.

[7] Salima was later arrested by Police at Arnold's place. She was there with the latter smoking. When the Police arrived she had given Arnold the phone that belonged to the dead man which she had taken possession of at Florence's place.

[8] Bernard Hoareau is the Manager of a security firm but was formerly a police officer. On 02nd June 2017, he was working at the Supreme Court. At around 11 am, in the vicinity of the SPTC Bus Depot at Perseverance, he was approached by a black man who enquired whether he was a police officer. He was informed by that man that he had discovered a body in the bush. He followed that man who showed him the body. The body was in the bush near a secondary road. It was a white male that was later identified as the deceased. He made a call to the Police Station and informed them about the situation after which an officer from Anse Etoile, Richard Larue came to the scene.

[9] Officer Aubrey Quatre is in fact the officer in charge of the Scientific Support Crime Records Bureau ("SSCRB"). He had received a call from Sgt. Leon alerting him to the findings of a scene of alleged crime at Perseverance. He despatched a team. That comprised of PC Bethew and Officer Steve Elizabeth. At the scene they met with Sgt. Leon. Officer Elizabeth testified to the same. He identified the deceased to them. At the scene they saw the deceased on the ground and unresponsive. He equally attended the post-mortem of the deceased on the 03rd June 2017 which was performed by Dr. Rosa Maria, the pathologist.' He took photographs of the post-mortem. Then after 12.00 hrs, he and a team went to the residence of Florence Francoise. He was assisted by PC Bethew and CID Officers. This is confirmed by PC Bethew

[10] There, several items of exhibits were seized. That included a pair of black shoes with gold design found amongst some bushes. Then they proceeded to the residence of Rosie Bristol which is also located at Les Mamelles. A black Samsung J5 mobile phone was seized from the bedroom of one Arnold Tirant. Cpl. Bethew states that he is the one who

seized the phone which he later (17.30hrs) handed over to Inspector Ivan Esparon. He also produced, without objections an album of 70 photographs (Exhibit P2) he had shot. These photos include those taken at Florence Francoise's residence, the mobile phone taken from the bedroom of Arnold Tirant, a black Hyundai Eon vehicle registration number S20801, the post-mortem indicating the body the deceased

- [11] Police Officer Steve Elizabeth was attached to the SSCRB as a Crime Officer. He was working on 02nd June 2017 and instructed by his superior, SP Bouzin to attend an alleged crime scene at Perseverance. His assigned duty was to take photographs, PC Bethew the Exhibit Officer and ASP Quatre, also assisted them at the scene. This is supported by the testimonies of these two officers. They arrived at the scene at around 11.45 a.m. They met with Sgt. Leon who was already there and he gave them a brief detail of the scene. There was also members of the public who was present at the scene but standing behind the cordon that was placed by the Police. The body of the deceased was on the ground. They adopted normal crime scene procedures of securing the scene and labelling it with numbers, taking photos and picking up objects as exhibits. He is the one who took photographs. These photographs were processed following approved procedure and were presented to Court. The album of photographs was marked as Exhibit P1.
- [12] Cpl. Alexandro Bethew collected certain swabs from the deceased at the scene, which swabs were sent for analysis. There were buccal swab, swab taken from both hands, nostrils and from lower back of the deceased. He too attended the post-mortem. Dr. Rosa Maria handed over to him sample of vitreous humor, blood and urine samples, liver and stomach content samples. He collected certain items at the residence of the first Accused which included the pair of shoes. He added that when the officers went there the 1st Accused was there and she explained what happened. He prepared Exhibit Charts (Exhibit P3 and P4). He also travelled to Mauritius with the different swabs whereby they were handed over to Quanti-Lab for analysis. He produced as evidence several items and all corresponding documentations that were marked as exhibits.
- [13] Stephan Monshougy is the brother-in-law of the 2nd Accused. He testified that he had a black Hyundai Eon car, registration No. S20802 which he lent to the second Accused. On

the date of the incident, 02nd June 2017, the vehicle was in the possession of the 2nd Accused. That is the vehicle that allegedly was used to transport the deceased in to be disposed of at Perseverance. That vehicle was seized by the Police.

[14] Police Officer Timothy Hoareau too was instructed to proceed to the scene where the deceased was discovered. That was at around 1,30 pm on 02nd June 2017. He was shown the body and conducted an examination of the body. After that, the body was taken to the mortuary. On 03rd May 2017, he cautioned the first Accused and a statement was taken from her. She was informed of her constitutional rights. He then went to Les Mamelles where he conducted a search and a Samsung mobile phone was seized from Mr. Tirant. The latter gave evidence that there was such search and such a phone was seized. Following that another statement was taken from the 1st Accused and similar protocol for recording the statement was followed. Gabriella Isaac witnessed the recording of the statements. This is acknowledged by Ms. Isaac. (After a voir-dire was held, the statements were deemed admissible). He also took the pair of shoes that was seized at Les Mamelles to a Spanish fishing vessel to be identified. The shoes were identified as similar to that of the deceased.

[15] Sgt. Brian Dogley cautioned and recorded the statement from Nigel Arrisol on 03rd June 2017. Jeffrey Antoine is Head of Detective Services was on duty and witnessed the caution and recording of statement. All approved protocol for recording statement was followed.

[16] Cyril Tirant testified that he learnt the he was needed by the Police. So he went to the Police Station, but just before that he met with Salima Marday at Les Mamelles where they had a smoke. They went to his home to smoke and when they were there, his mother entered with a female police officer. Salima said that the police officer was coming for her and she handed him her phone to keep until her release. He took the phone and placed it in his mother's room. A while later several police officers came to his home. They first went to Salima's house first. They arrested her and later came to his house and asked for Salima's phone. He showed them the room and they took photographs and then seized the phone. It was a Samsung phone.

- [17] Dr. Orlides Rodriguez is a general pathologist working with the Ministry of Health. He had known and work with Dr. Rosa Maria who conducted post-mortem on the deceased but has since left the Republic. After establishing that he was conversant with the signature of Dr. Rosa Maria, he was asked to produce the post-examination report of the deceased. The report states the cause of death as being pulmonary oedema and heart failure. Other significant condition contributing to death included visceral congestion and left ventricular hypertrophy. This suggests high blood pressure and chronic hypertension. He states that the use of controlled drug such as morphine or heroin could cause high blood pressure. When someone suffers from severe pulmonary oedema, if not treated, it can result in death. That can occur in a short time. He explains that when a person suffers from such oedema, he feels short of breath and would need medical attention, otherwise the person can pass away. Death could precipitate if the person has underlying conditions such as high blood pressure and is consuming excess alcohol.
- [18] Mr. Gaston Lew from QuantiLAB, Mauritius explained results of forensic analysis explained result on samples that were sent by the Seychelles Police to them. The samples were taken from the deceased. The result revealed presence of morphine in blood samples of the deceased. The morphine concentration was 42ng/ml and monoacetylmorphine at a concentration of 5ng/ml. Toxicology examination performed revealed that in the urine sample examined there was morphine and 6 monoacetylmorphine. A quantitative analysis test of a urine sample detected morphine at a concentration of 75ng/ml and 6 monoacetylmorphine at a concentration of 284ng/ml.

The Defence Evidence

- [19] In exercise of the right to remain silent provided for under Article 19(2)(h) of the Constitution, the Accused did not take the stand nor call any witnesses. However, through cross-examination, they attempted to put forward their defence. They are not disputing the death of the deceased. They do not dispute that they are the ones who drove to Perseverance to dispose of the body. Their position is that there is not an iota of evidence that the 1st Accused provided drugs to the deceased, Aitor Serrana Valteria. The position of the 1st Accused is that the deceased died in his sleep and that in any case death was not

foreseeable. As regards the 2nd Accused the defence is that he had no knowledge that Mr. Valteria was deceased nor did he have any knowledge that the death occurred as an omission on the part of the 1st Accused.

The Law

(i) Manslaughter

[20] The offence of manslaughter is described under section 192 of the Penal Code (“the Code”). The vital ingredients of the offence is that there should be an unlawful act or omission that causes the death of another. That unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or death. It is irrelevant whether or not such omission is accompanied by an intention to cause death or bodily harm.

[21] Section 199 of Code define ‘causing death’. It states;

“A person is deemed to have caused the death of another person although his act is not immediate or not the sole cause of death in any of the following cases;

(a)

(b)

(c)

(d) If by any act or omission he hastened the death of a person suffering under any disease or injury which apart from such act or omission would have death caused;

(e) If his act or omission would have caused death unless it has been accompanied by an act or omission of the person killed or other persons.”

[24] In **R v Sirame (SCA 06/2012) [2014] SCCA 6 (11 April 2014)**, two generic types of manslaughter are identified; voluntary and involuntary manslaughter. It states that;

“[V]oluntary manslaughter is committed where the accused has killed with malice aforethought, and could be convicted of murder, but there are mitigating circumstances present reducing his culpability. In other words, voluntary manslaughter consists of those killings which would be murder because the accused has the relevant mens rea but which are reduced to manslaughter because one of the defences, like diminished responsibility, provocation, etc., exists in the case.

*“Involuntary manslaughter is an unlawful killing committed by an accused who did not have malice aforethought but who, nevertheless, had a state of mind which the law treats as culpable. **BLACK’S LAW DICTIONARY** (supra) defines it as a “Homicide in which there is no intention to kill or do grievous bodily harm, but that is committed with criminal negligence or during the commission of a crime not included within the felony – murder rule. involuntary manslaughter is a “catch-all” concept. It includes all manslaughter not characterized as voluntary.”*

[22] This case falls within the second type of manslaughter; involuntary manslaughter. Although it is trite law that a person accused of manslaughter lacks the *mens rea* for murder, the prosecution must prove that he has the *mens rea* appropriate to execute the unlawful act which caused the victim’s death.

[23] Counsel for the 1st Accused referred to **Leslie Ragain CR SCA 02/2012** wherein the Court of Appeal stated that *“[I]n order to prove constructive manslaughter, there must be evidence to establish that the accused intentionally performed an ‘act’ and that ‘act’ is unlawful and that ‘act’ resulted in the death of a person. According to section 10 of the Penal Code “..... A person is not responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.”*

(ii) Accessory After the Fact

[24] Accessory after the fact is described under section 384 of the Code. It requires that the Accused receives or assist another, whom to his knowledge is guilty of an offence and he does that to enable that person to escape punishment. Therefore, an accessory after the fact to a crime is a person who assist;

- (i) Someone who has committed a crime;
- (ii) After that person has committed the crime;
- (iii) With knowledge that the person has committed the crime; and
- (iv) With intent to help that person avoid arrest or punishment.

[25] Therefore, in essence that 2nd Accused will become culpable if he assisted the 1st Accused of escaping punishment with knowledge that the 1st Accused would be guilty of an offence. That goes to mens rea. It must be clearly established that the 2nd Accused had the prerequisite knowledge that the 1st Accused was guilty of an offence and that he assisted the 1st Accused to escape punishment. This connotes an active assistance after the offence is committed. That assistance will be considered the actus reus. However, it is to be noted that an accessory after the fact is not an accomplice. The latter participate with the planning or execution of the crime. An accessory is someone who was not involved or had knowledge of the crime before it was committed but becomes involved after the commission of the criminal act and knows that the criminal act took place.

Discussion

In this case as in all cases before this Court, I have comprehensively considered all the evidence adduced but have herein referred merely to those parts of the evidence I consider most pertinent.

(a) Charge Of manslaughter Against the 1st Accused

[26] The 1st Accused is charged with an omission which amount to culpable negligence to discharge a duty tending to the preservation of life that resulted in the death of the deceased. This is because according to the prosecution the 1st Accused had a duty of care towards the deceased. As I understand it, was the failure of that Accused to ensure that the deceased received medical care when it was discovered that he was in a critical state of him not being responsive, a breach of that duty of care? The 1st Accused had tried to wake up the deceased but such attempts were not successful.

- [27] Thus the 1st Accused has been charged with manslaughter. This according to the Prosecution was the result of an unlawful omission that amounted to culpable negligence to discharge a duty tending to the preservation of the life of Aitor Serrano Valentierra. That presupposes that the 1st Accused had a duty of care towards the deceased. That duty of care refers to the circumstances and relationships giving rise to an obligation upon an accused to take proper care to avoid causing some form of foreseeable harm to another in all the circumstances of the case in question. As correctly submitted by Learned Counsel for the 1st Accused, the Court should evaluate the action of the 1st Accused in this given situation against that which a competent person would exercise in a similar situation. The test is therefore a subjective one. This is what is required when determining whether a duty of care existed and whether there was breach of such duty.
- [28] A duty of care refers to the circumstances and relationships giving rise to an obligation upon an accused to take proper care to avoid causing some form of foreseeable harm to the deceased in all the circumstances of the case in question. In **Woodcock v Chief Constable of Northamptonshire [2023] EWHC 1062 (KB)** it was held that the Police was under a duty of care to warn the claimant of impending danger. In that case breach of such duty ended in the claimant being stabbed by an assailant and despite a neighbour calling the Police to warn that the assailant (who was known to and being monitored by the Police) was in the vicinity the claimant's residence and that she was about to go out, the Police failed to warn the claimant of such danger. There was a breach of that duty of care.
- [29] In the present case, the 1st Accused had met the deceased a few hours before his passing. Therefore, it can be safely concluded that she was unaware of any underlying medical condition that the deceased had. We learnt from the post-mortem report that the deceased's causes of death were severe pulmonary oedema and heart failure. It is also in evidence as per of Dr. Rodriguez's testimony that high blood pressure and chronic hypertension contributed towards the death. It was also diagnosed that the deceased suffered from hypertrophy and cardiomegaly. In the absence of evidence to the contrary, it can safely be said that these factors were unknown to the 1st Accused.

- [30] We also have the evidence of Mr. Lew from Quantilab that examined blood and urine samples taken from the deceased. The samples were found to contain morphine and 6-monoacetylmorphine. These are illicit drugs. That precipitated the death of the Mr. Valtierra. However, there is no evidence that it was the 1st Accused who gave or administered drugs to the deceased. Further, there is no evidence that the 1st Accused knew the state of health of the deceased and that the taking of drugs could contribute towards possible death. That suggests that the 1st Accused at this point in time had no duty of care towards the deceased. Nonetheless, if the 1st Accused, having used drugs noticed that the deceased was having breathing problems as a result, then she would definitely owe a duty of care to seek medical attention.
- [31] Salima gave evidence that after she had reached the 1st Accused residence in the early hours of the 02nd June 2017, she had been informed by one of the presence Mr. Valterra in the 1st Accused's bedroom and that he was having difficulty breathing. As stated, if that was the case, the 1st Accused having brought Mr. Valterria, a person he had met a few hours before, to her home, and of whom she had no knowledge of his past medical history, would have needed to seek medical attention for him. However, the prosecution failed to call Laura as a witness. The evidence of Salima in that respect is hearsay.
- [32] It is imperative that the prosecution establishes beyond reasonable doubt that the omission of the 1st Accused was the cause of or contributed towards death of the deceased. Furthermore, that death was the result of the 1st Accused's failure to exercise a duty of care. Counsel for the 1st Accused relied on what is termed the Caparo test. **Caparo Industries v Dickman [1990] UKHL 2** created what the court termed as the tripartite test in establishing duty of care. This test departs from **Donohue v Stevenson [1932] UKHL 100** and what is described as the Wilberforce test laid down in **Anns v Merton London Borough Council Anns [1978] AC 728** which starts from the assumption that there is a duty of care and that harm was foreseeable unless there is good reason to judge otherwise. On the other hand, **Caparo** starts from the assumption no duty is owed unless the criterion of the three stage test is satisfied. These criteria are: (a) foreseeability, (b) proximity and (c) whether it is fair, just and reasonable to impose such a duty. Yet this approach has been critiqued (see Mark Godfrey: The Categories of

Negligence Revisited; Harrison v West of Scotland Kart Club & Noble v De Boer 9) by over complicating the “neighbour” principle in Donoghue. Moreover, there is now an abundance of case law which is moving away from that Caparo test. These include the case of **Wookcock v Chief Constable of Northamptonshire (supra)**. Further it is to be noted that section 192 of the Code places a duty of care on one to ensure the preservation of life. Therefore, the Capora test is not necessarily the test to be followed.

[33] Section 192 of the Code defines an “*unlawful omission as an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or death.*” This Court has to consider whether given the circumstances surrounding this case the action of the 1st Accused amounted to culpable negligence and whether in the circumstances that Accused had a duty to ensure the preservation of life. In her first statement the 1st Accused stated that at around 4 a.m she had woken up the deceased and he had told her that he was unwell and that he was not getting up, so she left him on the bed. Unless, she was aware of the medical condition of the deceased, which obviously she did not, it was acceptable that she would have left him be and not seek medical attention, she did not then owe him a duty of care. There is no evidence that the drugs found in the deceased blood and urine samples was taken or administered when the deceased was at the 1st Accused’s residence.

[34] In her first statement to the Police, the 1st Accused recounted that the deceased had asked her to wake him up at 4 am. At around 4 am she woke him up and he said he was not feeling well. Instead of querying what was wrong she allowed him to go back to sleep. I would say that since the deceased was somewhat a stranger in her house, she would have been more alert to find out what was wrong with him. However, she states that she let him sleep at that around 5 am, Salima came to her and saw the deceased and Salima advised that the deceased did not look well. Even Salima stated that when she arrived to the house Laura had told her that there a man in the house that was having difficulty breathing. If that was the case, a right minded person would have sought assistance to protect the life of such person. Would the 1st Accused then not have had a duty of care to seek medical attention for the deceased? It must be borne in mind that even at that point the 2nd Accused was already in the house sleeping. He had a vehicle. Would it not have

been sensible to ask that the deceased be taken to a clinic or hospital? Salima nonetheless added that at around 5.00 a.m when she went upstairs she noticed that the deceased had passed since his lips had turned blue and his ears were purple. Salima added that they removed the man from the bed and they saw that he had passed away. Salima even went further to state that after they had taken the man down and placed him on the sofa to sit, the 1st Accused called “*out for that man and when she got the man to stand up*” Salima noticed blood running from his nose and Salima says that she knew then that the man might have suffocate.

[35] In her first statement to the Police, the 1st Accused had admitted that the Accused did not look well when he was placed in the car. This is confirmed by the 2nd Accused that he assessed the deceased had already dead then. She then adds that as they were going down in the car, they stopped at a shop. She went to the shop and bought a bottle of coke and a bottle of water. She took the bottle of coke for herself and she handed the deceased a bottle of water. Why would the 1st Accused hand over a bottle of water to a dead man? That could be because she was aware that Mr. Valtierra was still alive when he was placed in the car. However, shortly thereafter in her second statement to the Police she withdrew that former assertion that Mr. Valtierra was still alive when he was placed in the car. She states that the deceased had already passed away when he was still in the house, in the bedroom and even before he had taken him down to be sat down on the sofa. So, what prompted the 1st Accused to change her story?

(b) Charge of Accessory after the Fact to a Felony Against the 2nd Accused

[36] As correctly submitted by Counsel for the 2nd Accused, an accessory after the fact is someone who; (a) assist someone who has committed a crime, (b) after that person has committed, (c) with knowledge that someone has committed the crime and (d) with intent to help the person to avoid arrest or punishment. This is in conformity with section 384 of the Code. It is also the position that even if the principal offender, that is the one who is accused of having committed the crime is found not guilty, the person charged with the offence of accessory after the fact may be so convicted of that crime.

[37] What is most essential to prove by the prosecution is the knowledge that the principal offender has committed the crime. Evidence against the 2nd Accused comes mainly from Salima Marday and the 1st Accused and the 2nd Accused's statements under caution. It is accepted by the 2nd Accused that he agreed with the 1st Accused to dispose of Mr. Valtierra at Perseverance. Furthermore, from his statement it is clear that he assessed Mr. Valtierra as dead at that point and reluctantly agreed to have his body disposed of. He states; *[B]oth Florence and Salima were awake and Florence told me that it seemed that the foreigner had passed and that we take him away. Florence and Salima removed and brought the man from the room to the ca, I noticed that this man was not well as he was not showing any signs of life. I suggested that we take the guy to hospital or to a police station, but Florence and Salima told me that we should take the man to a spot where would be able to see him.*" All suggestion is that the 2nd Accused did not believe that at the time the man was placed in his car that he was alive.

[38] Salima's testimony reveals that the 2nd Accused's role was merely to convey the deceased to Perseverance. However, in his statement under caution, he states that after being asked to convey the deceased to the Perseverance, he asked that the deceased be conveyed to a hospital or a police station. The 1st Accused and Samila refused to take that course of action. Was the fact that he had suggested that the deceased be taken to a police station indication that at that point he suspected Mr. Valterria had passed away? Should the fact that the 1st Accused and Salima refuted such suggestion have been indication that something was wrong and that the two could have something to do with the death of Mr. Valtierra?

Determination

[39] I find that when Mr. Valtirra first told the 1st Accused that he was unwell and that he would wake up later, it could not have been expected that she would have known of his medical condition as described in the post-mortem report. In any event, at this point in time Mr. Valtierra had not indicated that he needed medical assistance. The proximity between the 1st Accused and the deceased was such that such situation most probably would not have sent an alarm to the 1st Accused to act. Mr. Valterria had only stated that

he will not be waking up and the 1st Accused just allowed him to remain in bed. Furthermore, there is no indication that the consumption of heroin was not voluntary and in any case, it is not established at what point in time that the drug was consumed; if it was prior to meeting up with the Accused or after they met. If it was after they had met and more precisely after they had reached the 1st Accused's house, then probably the 1st Accused should have been more alarmed. The 1st Accused is a drug user and it could well be that she had encountered such situation where people who have used drug would feel unwell but without serious consequence. However, we have no evidence in that respect.

[40] Salima testified after she arrived home in the early hours of the 2nd June 2017, Laura had informed her *“that there is someone here and I asked who was that person that was here and she said a man. Laura told that that man seems to be having trouble breathing.”* That should have alerted the 1st Accused that the man needed medical attention and she would have owed him a duty of care to seek such medical attention. Nonetheless, I consider that part of Salima's evidence to be hearsay. Therefore, the Court cannot attach any attention to it. Laura was never called as a witness. That was a major lapse on the part of the prosecution.

[41] However, the 1st Accused clearly said in her statement that after Salima had come to her room and saw the deceased, Salima had told her that the man was not well. Since the deceased had also told her when she went to wake him up at around 4.00 am that he was not feeling well coupled with Salima's observation that the deceased did not look well, therefore, following the principle espoused in **Woodcock v Chief Constable of Northamptonshire (supra)**, at that point the 1st Accused had a duty of care to seek medical attention. She did not. She did not adhere to the duty placed on her by virtue of section 192 of the Penal Code. Such omission amounts to culpable negligence. She was under a duty to seek assistance.

[42] Therefore, I find that the Prosecution has discharged that burden to the required criminal standard; beyond reasonable doubt. So, I accordingly convict the 1st Accused as charged.

[43] As regards the 2nd Accused, from the time that the deceased was brought into the car, he sensed that he was not showing any sign of life. That means he believes that the man was

deceased. He even suggested that the deceased be taken to a hospital or police station. It is without doubt that despite reluctance he assisted the 1st Accused in disposing the body after the man was deceased. I am of the opinion that he took that course of action to help the 1st Accused avoid arrest. However, I believe that an important ingredient is missing in establishing the offence. That is the knowledge that a crime has been committed and that it was the 1st Accused through her negligence that allowed Mr. Valtierra to die. There no evidence that there was any marks or injuries on Mr. Valtierra's body to alarm someone of the probable commission of a crime. In the absence of such important element, I have no acquit the 2nd Accused of count 2.

[44]

Signed, dated and delivered at Ile du Port on 19 January 2024

M Vidot J